

Tronox Joint Agency Mid-Level Managers meeting
Tuesday March 27, 2018 8:00 – 12:00
BIA Southwest Regional Office, Conference Room 133 BIA 1
1001 Indian School Road NW, Albuquerque, NM

Meeting Goals:

Bring mid-level managers together to discuss the following management level issues:

1. To prepare for upcoming Agency Executive level meetings (tentative April 2018) and review key issues that will be discussed so that executives can be briefed
2. Review, discuss and get general agreement on annual meeting schedule and reporting formats so that everyone is clear and that stakeholders can better plan their individual/staff participation in meetings and key activities

Representatives from the following agencies attended the meeting:

- Navajo Nation Environmental Protection Agency (NNEPA)
- Navajo Nation Abandoned Mine Lands (NNAML)
- Navajo Nation Department of Justice (NNDJ)
- Navajo Nation Office of the President/Vice President (NNOPVP)
- New Mexico Environment Department (NMED)
- New Mexico Mining and Minerals Division (NMMMD)
- Navajo Superfund Program (NSP)
- U.S. Environmental Protection Agency Regions 6 and 9 (USEPA)
- USEPA Office of Inspector General (USEPA OIG)

Participants: See sign-in sheet in Attachment 1.

Note: Action items are identified in red within the notes and summarized in a separate file.

Summary

Approximately 22 stakeholders gathered on March 27th, 2018 in Albuquerque for the Tronox Mid-Level Managers Meeting. The focus was on preparing for upcoming Agency Executive-level meetings and reviewing key issues that will be discussed so that executives can be briefed by the managers present at this meeting. The opportunity was provided to participants to seek clarification on these key issues prior to meeting with their Agency executives. This meeting was scheduled to end at noon but we continued after lunch. Additional participants joined us at that time.

Opening – Lori Lewis (Facilitator)

The meeting was called to order at 8:24am MT. Lori Lewis welcomed meeting participants to the Tronox meeting and invited each organization to provide opening remarks.

Participating via phone:

- Ben Banipal, USEPA R6

- Chris Villarreal, USEPA R6
- Patrick Milligan, USEPA OIG (Philadelphia Office)
- Kate Robinson, USEPA OIG (Philadelphia Office)

Lori reviewed the morning's agenda including three primary areas of focus: Operating Principles and conceptual charter, Cleanup removal options and competing stakeholders' interests, and financial reporting and format.

Announcements

- Chip Poalinelli (USEPA Region 9) – The mines in the Cove area are very inaccessible; one goal was to improve access. The press release came out yesterday; Clawson Excavating a Women-Owned Navajo Business, was awarded the ~\$920,000 road construction contract for the Cove mines. Construction is slated to begin April 23rd. Give kudos to our contracts team for making this happen.
- Patrick Milligan (OIG) – Status of the OIG audit: OIG just completed a preliminary (90-day) research phase that was reported to management. The team was expected to determine: 1. Does EPA have a method for prioritizing clean up? 2. Does EPA have resource allocation methodology for the site? They found that EPA did not have a prioritization methodology in place, *however* all efforts to date were leading in that direction; there is work to be done and information to be gathered to get to the prioritization phase. OIG plans to report out favorably based on research so far.

Preparation for Executive Level Meetings

Purpose: To prepare for upcoming Agency Executive level meetings (tentative April 2018), i.e., to ensure that everyone has enough information (i.e., key issues, common and conflicting interests and concerns) on following key topics to brief at the Executive level

- We have been talking about getting together the executives of the joint agencies. We are coming to a milestone with key decisions (e.g., waste disposal) that will require communication at a higher level. We want to make sure that everyone has enough information to brief their executive level. Some of the things we would want to talk about
 - Future prioritization and timeline
 - Working together/communicating – how are we doing this?
 - Discuss possible barriers – some of the conflicting interests in the two Tronox areas.
- Purpose is not to debate the information itself, but instead do I have enough information to conduct a briefing? As we start going through the RSEs we may need to revisit the factors.

Mine Prioritization Methodology and Timeline

- Brief review of Prioritization Methodology and Timeline presentation (delivered at October 2017 Tronox Stakeholder meeting)
- Group Discussion and clarifying questions
- Review the prioritization factors we are starting with (54 mines).
- Overview of the factors – we are not looking at ranking these 1-54 because we do not want to put a numerical value on them; rather will use a low/medium/high system and group them.
- Once RSEs are finalized, we will be able to prioritize the order in which the EE/CAs will be done.

- There will be other factors considered in the prioritization methodology. Reviewed the 8 that were reviewed at the last meeting to ensure there were no other questions (again, preparing to brief management). Nothing is set in stone until we get all the data in from all the mines; we may need to alter these; will work with the stakeholders to tweak scoring ranges after data is complete.
- Q: Are the factors ranked in order or weighted equally?
 - A: Right now they are equal but we can have the discussion to weight them later if we find that certain factors should be weighed more heavily.

Factor: Radiation Level Above Background

- Should consider: surface scan (add a factor or a notation that it would be based on contamination levels based on surface and sub-surface scans).
- Also have a factor based on volume of waste – the borings will determine the volume as well as the depth of the stockpile; will be used to profile it.
- Should consider: Establishing complete, incomplete, or partially incomplete pathways.
- Should consider: The community; all the science is wonderful, but it's the people and their air/water is what is one the top of the list.
- Should consider: The depth of contamination.
- RSEs will provide the type of information needed to do the prioritization; all RSEs will be completed prior to any prioritization.
- Mine Characterization Assessment Protocol (MCAP)(done in 2016 in Cove) (high/low/medium risk)
 - it is on the website: https://response.epa.gov/site/site_profile.aspx?site_id=11282
- Q: Pile of mine waste versus air or water borne contamination; a distinction to be made about transported contamination versus a pile.
- *Seeking Consensus*: Is this still a viable factor with refinement (type of material, depth of contamination; proximity of community); can we move forward with this factor in the prioritization?
 - A: Yes.

Factor: Waste Material Characteristics

- Q: Have to consider the level of mobility – DOE has been developing their own criteria for working on Federally-managed land; they have a weight within each factor (i.e., Low mobility but high gamma readings, they bump it up) Do we need multipliers for certain readings?
 - A: We can further discuss this as the data comes in from assessments.
- Need to also consider level of contamination and mobility impact.
 - We are considering it when we take measurements for both factors. We address the contamination in Factor 1.
- Time critical issues will also take precedence (including impact to the community).

Factor: Migration to Surface Water

- This factor is describing where the mine is relative to water that can cause transport.
- Have to look at geo-chemistry not just (and whether soluble or transportable) versus grain size.
 - Need to add geo-chemistry.
- Consider community impacted by the water way (e.g., Cove and subsistence farmers)

Factor: Land-use Scenario

- Q: When we apply this factor are we applying to the source area or the disposal location?
 - A: Mine site itself. The pathways would have to be considered as well as the land-use.
- Risk Assessment comes after RSE but before EE/CA. Risk Assessment will capture much of the information that we are discussing.

Factor: Accessibility

- Q: How is this different from land-use; seems intertwined.
 - A: Land-use is land purpose and this one is how accessible is it. There may be sites that are difficult to get to, but maybe someone stays there for long periods of time.
- Q: Can you have a residential site but low accessibility?
 - A: Yes, you could. Sheep camps are not very accessible but community members camp there for long periods.
- Consider this one as the lowest priority. This does not seem like a reason to prioritize or not prioritize a site.

Factor: Reclamation Status

- Reclamation was done (or not done) by AML.
- More for areas on Navajo that had been previously addressed by AML.
- Determine if the clean-up level was appropriate for specific uses.
- The RSE will give us a better understanding of the status of the reclamation. Also, whether immediate actions need to be taken to address deterioration of reclamation efforts.

Factor: Impact to Ground Water

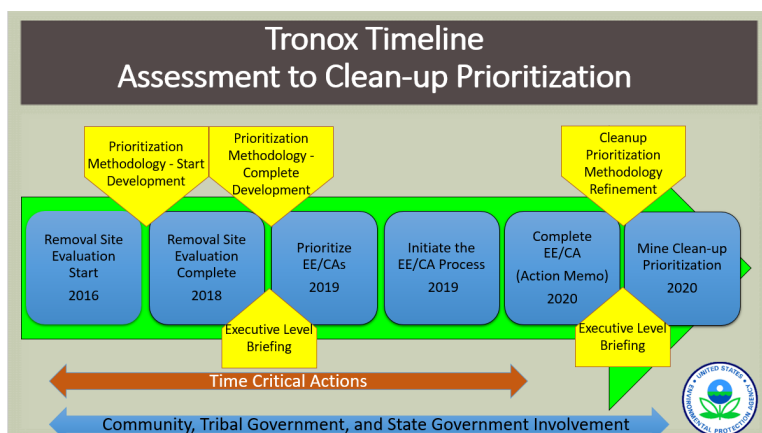
- Put one in the middle that says “has the potential to.”
- Using discussions to put together a methodology document that describes how things are prioritized in a standard way.

Factor: Surface Area of Impacted Material

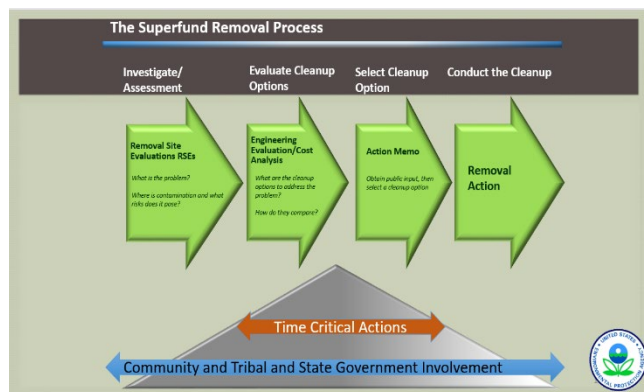
- Note: the numbers could change once the data from the RSEs comes back.
- Q: Why use the word significantly impacted? That is a good point because that is not easy to define. If managers group agrees – either define “significantly impacted” or remove “significant.”

Tronox Timeline Assessment to Clean-up Prioritization

- RSEs began in 2016 and are continuing. Hope to complete by the end of 2018 calendar year. Will provide the data to use the risk factors we have discussed in this methodology.
- Methodology for prioritization will also be finalized at this time.
- Q: Where does risk assessment fall into the process timeline?
 - A: After the completion of the RSEs.



- Methodology will be refined after EE/CAs are complete in 2020 based on collection of data.
- Should consider: **ADD risk assessment to timeline slide**, or add a notation because it is not a separate box (it is a distinct activity). But, it helps to define the specific activities for a specific site. Preliminary Risk Assessment done at the RSE stage followed by a final Risk Assessment conducted as part of the EE/CA.
 - Or, an arrow down to a box with what the RSE includes.
- Consensus: We would have two slides for executive materials. 1. Process 2. Timeline. (Initiate the RA/ EE/CA process).
- Q: What does “executive level” mean?
 - A: Two superfund Division Directors, President, Cabinet Secretaries, and Regional Administrators
- Suggestion: Add “goals” for each of the Executive Meetings.
- Next month’s executive meeting is to get them up to speed and is not on the timeline slide.
- Would be useful to include the Uranium Executive Director in the Executive meetings and keep the commission apprised.
- Q: We need to be thinking about how we are going to address the long-term financial issues; we will not know if there will be enough money to clean-up all 54 mines. The Tronox money was intended for the mines on Navajo Nation. If the mines require prioritization from a financial perspective should include FIRST the mines in the Navajo Nation as the money was originally intended. Should consider: Include the impact to Navajo somewhere in the prioritization.
- Discussion about the co-mingling of waste that is currently happening in the Ambrosia Lake area. The President is aware of this as well as the mining activity that is still currently going on (Ambrosia Lake). The State of NM offered clarification of the mining still occurring at the Mt. Taylor mine. They have a permit to mine, but is not currently actively mining because the mine is currently flooded (they have to de-water in order to put men down there) and the refurbishment of the mine that is necessary before mining resumes. Water is contaminated and must pump all the water out and clean it up in order to discharge it to the surface.
- Q to NNEPA: Is there information that R6 can provide Navajo EPA to address those concerns?
 - A: What needs to be defined is the co-mingling of waste. It became an issue because of the tunnels. How do we separate Tronox waste from Haystack waste – the EPA is grappling with this question as well.
- Suggestion made to refer to concepts in Fundamental Law because that is what is applicable to the Navajo. The Government language does not touch on the principles of Fundamental Law.
 - Action Item: **Warren put together a slide that connects the process with fundamental law. We might want to include this**
- The Removal Process slide with definitions of what is included in the RSE and the EE/CA will be helpful for executive level briefings.
 - **Note for Chip: Update superfund removal process slide.**



Operating Principles and Conceptual Charter

Background: The Tronox joint agency stakeholder group has discussed at past meetings general principles for working together. It would be good to have general agreement on a written document(s) that can provide clarity so that we can work together successfully.

- Overview of general operating principles and identify key elements for a possible charter format that we could use to formally document our Joint Agency Stakeholder agreements and understandings.
- Clarifying questions; identify possible revisions; check for general agreement

Proposed Operating Principles

- *Collaboration*
 - Dr. Benn – community members probably do not tell EPA everything. They see USEPA in the field; they feel they are not being heard.
 - Community members are seeing EPA doing different things – no consistency.
 - Collaboration at the community level is not happening.
 - Community members feel that things “are not being done right.”
 - Suggestion: include transfer of information and collaboration at the *community level* early on. Before we even start working with the communities, specific projects should be taken to the community members and tell them what is really happening before EPA even shows up; rather than showing up and doing it.
 - How do we get the message out to the community members who do not attend meetings at the chapter house?
 - EPA holds community briefings; fact sheets; door-to-door; Navajo translation; information call line
 - Suggestion: The Navajo Nation uses radio to communicate information; best way to communicate.
 - Suggestion: To identify and define what “information” is.
 - The President would like to see more information from the EPA about projects (e.g., status)
- *Communication*
 - What information are executives looking for? That will help EPA communication.
 - How can the entire program communicate better down to the community level?
 - Instead of presentation do an open house to answer questions. An open forum.
 - Good examples: Tuba City; Gallup
 - Food helps!
- *Decision Making/Resolving Conflict*
 - Good Example: NNEPA/R6 call about Ambrosia Lake tour and associated decisions; productive meeting
 - Superfund is requesting more of those.
 - In Navajo this is called “Nabi K’i yat’i” or “*peacemaking*”; in Navajo culture when there is conflict or decisions to be made it involves a lot of talking and for them peacemaking is the word that is good.
 - There is no written document about decision making processes and resolving conflicts.
 - There might be something in the notes that describes the process.
 - Q: When are decisions presented to the executive level?
 - Slide from June about the decision-making process.
 - Do we convene executives? Should they have routine meetings? Or, do middle managers push information upward?

- We should define what is an impasse. And what is the process for resolving it.
- *Mine Prioritization*
 - No discussion. Discussed earlier in the meeting.
- *Financial Planning*
 - As we proceed with remedies or alternatives, we have to look at our financial planning and how we are allocating and expending resources.
 - Always look forward not project by project.
 - This is a holistic program.
 - Suggestion: Add “joint effort” in financial planning
- What other goals should be identified as Operating Principles?
 - Resource Limitation (particularly personnel) – include something in Financial about resources.
 - In Collaboration add consistency in procedures (e.g., instrumentation)
 - Include something about implementation and execution
 - Similar to Navajo Corn Stalk Philosophy – we already have this set up in fundamental law. Community members can relate to fundamental law better and will help them understand the operating principles.

Discussion about the role of the State of NM:

- What non-Navajo mines are included in the list...?
 - When Tronox, Inc. filed for bankruptcy in 2010, EPA had an atlas on all of the uranium mines in and around the Navajo nation. When USEPA assembled its bankruptcy claim it included all of the mines; intended to be as inclusive as possible and include mines off the nation – there was no time to determine the details of what was on/off the Nation.
 - The uranium atlas was inclusive of all the mines, which was the basis of the EPA’s claim.
 - If those 22 mines had not been included, the claim would have been much smaller.
 - The number of Tronox mines OFF the Nation is 20.
 - HRI (appellate court decision) affected people’s view of the extent of tribal jurisdiction, which narrowed the definition of dependent Navajo communities, which may have skewed the viewed of which mines were included.
- What does this group feel is NM’s role?
 - NM can be a technical advisor.
 - The State has a defined role in the CERCLA process.
 - 20 of the mines are in NM and NM has an interest in how they get cleaned up and *if* that potentially includes Tronox money.
 - 20 total Tronox mines in the State of NM

Break for lunch @ 12:25pm

Meeting called to order post-lunch @1:40pm

Continuation of Managers Meeting...

State of New Mexico’s Role, continued...

- Insufficiency – uncertainty at this time that there will be sufficient funds
 - Once EE/CAs are written, we will have a better picture of what funding looks like.
 - If insufficiency occurs, there could be more money to bring in from other responsible parties.

- Move forward with an efficient process until we can answer all uncertainties; so NM should maintain their seat at the table until we see resolution in the future and the potential for additional funding should Tronox not be sufficient for non-Navajo Nation mines.
- Suggestion by Navajo Nation: That if there is insufficient funds, we add the 9th factor – Whether the mine resides on Navajo Nation land.
- The State of New Mexico has the collective knowledge, expertise, and historical knowledge of the Ambrosia mines and all stakeholders can benefit from that.

Cleanup and Removal Options and Competing Stakeholder Interests

Background: At previous stakeholder meetings, when possible cleanup alternatives were discussed for Section 35/36 and Quivira, stakeholders identified competing/conflicting interests. In order to prepare for the executive level meeting, it will be helpful to review both the common and conflicting interests

- Review interests (common and competing) identified during June 2018 Joint Agency Stakeholders Meeting
- Clarifying questions
- What are the possible disposal options when the time comes? The group came up with 14 options; the list was narrowed to 6.
- What additional information do managers need to respond to questions from executives about these options?
 - Need a definition put to them (e.g., excised vs non-excised). Language fleshing out what each of these means.
 - **Action Item: Disseminate the definitions of these disposal options for review.**
 - All options will be reviewed prior to implementation.
 - Clarifying where the UC is involved in the overall process.
 - Identifying a strategy for educating UC on the Tronox Program.

Executive Level Logistics

- Desire to have the Executive Director (ED) of the UC to participate in this meeting. Requires steps to brief the commission itself; a deciding factor in identifying a date.
 - Dr. Ben would have to meet with the ED of the UC.
 - We are not at a level to make this decision.
- **Action Item: Develop a draft agenda and work with Coordinators (below) (Will/Ronnie/Ben/Susan) Due: 2 weeks**
- **Action Item: The Coordinators from each Agency (below) will figure out meeting participants, date, and agenda items for the Executive Level Meeting:**
 - Navajo Nation – Karis (Dr. Benn)
 - EPA R6 – Ben
 - EPA R9 – Sean
 - NM – Kurt/Holland
- Potential meeting location – Albuquerque, BIA Training Room
 - Navajo would prefer it in Window Rock.
- Scheduling a full day will be difficult, but will not know how long of a day until team gets a draft agenda drafted and disseminated.
- The only day in April that the Navajo President is available is the afternoon of April 27th

End of Managers Meeting 3:00pm.